UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 6thday of September, two thousand six.

PRESENT:

HON. BARRINGTON D. PARKER,
HON. RICHARD C. WESLEY,
HON. PETER W. HALL,
Circuit Judges.

Chestnut Ridge Associates, LLC
Plaintiff-Appellant,

SUMMARY ORDER
No. 05-5418-cv

v.

Village of Chestnut Ridge,
Defendant-Appellee.

For Plaintiff-Appellant: Henry M. Grubel, Freeport, NY.

For Defendant-Appellee: Lewis Silverman, Rutherford & Christie, New York, NY.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court be AFFIRMED.

Plaintiff-Appellant, Chestnut Ridge Associates, appeals from a judgment, entered in the United States District Court for the Southern District of New York (Stephen Robinson, *J.*), granting Defendants' motion to dismiss Plaintiff's 42 U.S.C. § 1983 claims pursuant to FED. R. CIV. PROC. 12(b)(6). Familiarity with the record below and the issues on appeal is presumed.

"We review a Rule 12(b)(6) dismissal de novo, accepting all of the plaintiff's allegations as true and drawing all inferences in a manner favorable to the plaintiff." *United States v. City of New York*, 359 F.3d 83, 91 (2d Cir. 2004) (internal quotations omitted). Federal Rule of Civil Procedure 12(b)(6) provides for the dismissal of a claim for "failure to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). This Court will only dismiss the complaint for failure to state a claim if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

The Supreme Court has "recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that []he has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam). The comparator cited in the complaint – a neighboring bus depot – was not similarly situated to Plaintiff as a matter of law. Moreover, even if Plaintiff's broad allegation that it was "subjected to different treatment by the defendants than have other similarly situated landowners in the municipality" is sufficient to allege intentional different treatment notwithstanding the specific identification of an incorrect comparator, we do not need to resolve that tension in this case. We hold instead that the complaint fails to allege sufficient facts to support the second prong of the equal protection

pleading requirement – that there was "no rational basis for the difference in treatment" alleged to have been suffered by Chestnut Ridge. *Id*. Since we may affirm the judgment of the district court on any ground appearing in the record, whether or not relied upon by the district court, *Boule v. Hutton*, 328 F.3d 84, 92 (2d Cir. 2003), we find that Chestnut Ridge failed to state an equal protection claim.

We have considered Plaintiff's remaining contentions and find them to be without merit. For the foregoing reasons, the judgment of the district court is hereby AFFIRMED.

FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: _____